

BOARD OF BARBERING AND COSMETOLOGY

FINAL STATEMENT OF REASONS

Hearing Date: June 7, 2010

Subject Matter of Proposed Regulations: Administrative Fine Schedule

Sections Affected: Section 974, California Code of Regulations

Updated Information

First Modified Text: During the course of this rulemaking, the Board amended the regulations originally noticed to the public by amending some of the proposed language and fines in Section 974. These changes were submitted for public comment from December 9, 2010 through January 3, 2011. The changes and the reasons for them were as follows:

- Separate violations for Sections 965(a), 965(b), and 965(c) have been replaced by a single violation, for Section 965. The Board has determined the change is necessary in order to prevent a licensee from being fined more than once for what the Board believes is essentially the same offense.
- Separate violations for Sections 978(a)(1), 978(a)(2), 978(a)(3), and 978(a)(4) have been replaced by a single violation, for Section 978. The Board has determined the change is necessary in order to prevent a licensee from being fined more than once for what the Board believes is essentially the same offense.
- Separate violations for Sections 987(a), 987(b), and 987(c) have been replaced by a single violation, for Section 987. The Board has determined the change is necessary in order to prevent a licensee from being fined more than once for what the Board believes is essentially the same offense.
- Separate violations for Sections 988(a), 988(b), 988(c) and 988(d) have been replaced by a single violation, for Section 988. The Board has determined the change is necessary in order to prevent a licensee from being fined more than once for what the Board believes is essentially the same offense.
- Separate violations for Sections 990(a), 990(b) and 990(c) have been replaced by a single violation, for Section 990. The Board has determined the change is necessary in order to prevent a licensee from being fined more than once for what the Board believes is essentially the same offense.
- Separate violations for Sections 993(a), and 993(b) have been replaced by a single violation, for Section 993. The Board has determined the change is

necessary in order to prevent a licensee from being fined more than once for what the Board believes is essentially the same offense.

- Separate violations for Sections 994(a) and 994(b) have been replaced by a single violation, for Section 994. The Board has determined the change is necessary in order to prevent a licensee from being fined more than once for what the Board believes is essentially the same offense.
- Separate violations for Sections 995(b), 995(c) and 995(d) and 995(e) have been replaced by a single violation, for Section 995. The Board has determined the change is necessary in order to prevent a licensee from being fined more than once for what the Board believes is essentially the same offense.

Also, during the course of preparing the final rulemaking file, the Board discovered that the minutes of the Board meeting referenced in the Initial Statement of Reasons were mistakenly dated “January 23, 2010” in the Initial Statement of Reasons’ “Underlying Data” section. The minutes that were in fact available for inspection by the public are dated January 24, 2010. There were no requests from the public to view the minutes or any other documents associated with this rulemaking.

Second Modified Text: The Board submitted the rulemaking file to the Office of Administrative Law (OAL) on April 18, 2011. On May 24, 2011, OAL notified the Board of the disapproval of the regulation in connection with the Administrative Procedures Act’s “clarity” standard and other issues. The Board subsequently made a number of changes to the proposed regulation addressing the issues raised by OAL as well as some changes of its own, and presented a second modified text for public comment from June 9, 2011 to June 24, 2011. The changes in the second modified text and the reasons for them were as follows:

- Revises the language of 974(a) to reflect the correct citation order.
- Removes a redundant reference to “Schedule of Administrative Fines.”
- Indicates in underlined italics that the “Unlicensed Individual” category is a new, distinct category from the other Section 7317 violations in the fine schedule for the purposes of the schedule. This should have been underlined in the original text of the proposed regulation as well as in the first modified text.
- Adds an “i” to the word “illegal” to fix a typographical error in the description of Section 7349.1.
- Adds the words “or air hand dryers” to the descriptive language of Section 7352 to accommodate an amendment to the Business & Professions Code that went into effect on January 1, 2011.
- The deletion of the original \$100 fine under “1st violation” in Section 7349.1 was not properly noticed in strikeout in either the original language or the first modified text. The second modified text corrects that oversight. In Section 982

under “1st violation,” the deletion of the existing \$500 fine was not deleted in strike out in the original text or first modified text, nor was the new \$100 fine amount noticed in underline. The second modified text corrects that oversight.

- The word “Entrance” is removed from the description of Section 7360 because there is no specific requirement in the Business and Professions Code concerning entrances to mobile units.
- Changed “7404(i)” to “7404(l). Subsection (l) is the correct reference with regard to interfering with an inspection.
- Adds subsections letters (a)(1),(a)(2), (a)(3), and (a)(4) to the category that was listed as “978. Minimum Equipment and Supplies” in the First Modified Text. This was done to clarify that the fines apply only to those subsections and not to violations of other subsections of 978, which have their own fines, according to the schedule. The description has also been amended to more closely and specifically describe the violations to subsections 978(a)(1),(a)(2), (a)(3), and (a)(4).
- Consolidates Subsections 979(a), 979(b), 979(c), 979(d) into a single violation category, “Section 979. Disinfecting Non-Electrical Instruments and Equipment.” This corrects an oversight in the first modified text by Board staff in which the subsections were left as separate categories. The fine schedule revisions approved by the Board on October 25, 2010 had directed that the subsections to 979 be consolidated as they now appear in the second modified text under the same \$100, \$250 and \$500 fines. As with other instances in which the proposed fine schedule consolidates subsections into a single category, the Board had determined the change is necessary in order to prevent a licensee from being fined more than once for what the Board believes is essentially the same offense.
- Consolidates Sections 983(a) and 983(b) into a single Section “983. Personal Cleanliness.” This corrects an oversight in the first modified text by Board staff in which the subsections were left as separate categories. The fine schedule revisions approved by the Board on October 25, 2010 had directed that 983(a) and 983(b) be consolidated as they now appear in the second modified text.
- Added subsection letters (b),(c),(d), and (e) to the category that was listed as “Section 995. Building Standards” in the First Modified Text. This was done to clarify that the fines apply only to those subsections, and not to violations of Subsection 995(a) (which references ventilation standards), a subsection that exists in regulations but is not included either on the existing fine schedule or the one proposed by the Board. The description has also been amended to more closely and specifically describe the violations of 995(b),(c),(d), and (e), which concern plumbing requirements.
- The second modified text makes two revisions concerning the use of the term “waivable” in the last column of the fine schedule. In the first modified text, the Board changed the word “correctable” to “waiveable,” in an effort to better reflect,

for the benefit of the licensee, the legislative intent of Section 7409 of the Business and Profession Code, i.e., that there might be a circumstance under which a licensee might not have to pay a fine for a violation. In the second modified text, however, the Board changes the spelling of “waiveable” to “waivable” to reflect a more common spelling, and also amends the language of Section 974(b) to explicitly condition the waiving of a fine to a violation being “correctable” under Business and Professions Code Section 7409. The changes accomplish the Board’s goal of better reflecting the legislative intent of Section 7409 while at the same time preserving that statute’s language, and satisfying the language of Section 7407, which requires the Board to indicate whether a violation is “correctable.”

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

There is no economic impact on small business. This regulation only applies to individuals or establishments who do not follow the laws of the State of California.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Summary of, and Responses to, Comments Received During the Initial 45-day Comment Period

No comments were received.

Summary of, and Responses to, Comments Received During the 15-day Comment Period on the First Modified Text:

No Comments were received.

Summary of, and Responses to, Comments Received During the 15-day Comment Period on the Second Modified Text:

No Comments were received.

